

REMARKS

Claims 33-38 are pending in this application. Entry of the amendments and these remarks is respectfully requested.

The Rejections Under 35 U.S.C. § 102(e) And § 103 Should Be Withdrawn

Claims 33-38 are rejected under 35 U.S.C. § 102(e) as anticipated by, and under 35 U.S.C. § 103 as obvious over, Trinchieri et al. (U.S. Patent No. 5,811,523; the “’523 patent”). These rejections should be withdrawn for the reasons set forth below.

As indicated by the accompanying Request Under 37 C.F.R. §§ 1.607 and 1.608(a) for Interference With a Patent (“Request for Interference”), Applicants seek to provoke an interference with the ’523 patent. The ’523 patent, therefore, cannot be used as a reference against the instant application under 35 U.S.C. §§ 102(e) or 103 if the Applicants have filed a showing under 37 C.F.R. § 1.608. MPEP § 2306(D), Seventh Edition, July 1998.

As set forth briefly below, and in detail in the accompanying Request for Interference, the effective filing dates of the instant application and the ’523 patent are within three months of each other, making a showing under 37 C.F.R. § 1.608(a) appropriate. The requirement of Rule 608(a) has been satisfied by the accompanying Second Declaration of Thomas E. Friebe Under 37 C.F.R. § 1.608(a).

Both the instant application and the ’523 patent claim priority to a series of parent applications. As discussed in detail in the accompanying Request for Interference, the earliest effective filing date to which the claims of the ’523 patent can possibly be entitled is September 8, 1990, while the claims of the instant application are entitled to the benefit of an earlier filing date, August 27, 1990. Since the effective filing date of the instant application is, therefore, within three months of the effective filing date of the ’523 patent, a showing under 37 C.F.R. § 1.608(a) is appropriate. Thus, the accompanying Declaration of Thomas E.

Friebel Under 37 C.F.R. § 1.608(a) provides a showing that renders inappropriate the outstanding rejections under 35 U.S.C. §§ 102(e) and 103 based on the '523 patent.

As such, Applicants respectfully request that the rejections under 35 U.S.C. §§ 102(e) and 103 be withdrawn and an interference be declared.

Miscellaneous

The specification and claims have been amended to introduce appropriate sequence identifiers (*i.e.*, SEQ ID NOs). In addition, Applicants submit herewith a Sequence Listing in paper and computer readable form, and assert that the content of the paper and readable form is identical. As such, the application conforms to the rules relating to applications containing nucleotide and/or amino acid sequences (37 C.F.R. §§ 1.821-1.825).

CONCLUSION

Applicants submit that pending claims 33-38 of this application are allowable to Applicants if it were not for issuance of the '523 patent. Accordingly, Applicants respectfully request reconsideration and withdrawal of all outstanding rejections and earnestly solicit declaration of an interference with the '523 patent.

Respectfully submitted,

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Attachments:

Exhibit A: Copy of pending claims

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Ny. Nr. 39,201